

1 Michael Goldberg
mmgoldberg@glancylaw.com
2 Lionel Z. Glancy (#134180)
lglancy@glancylaw.com
3 GLANCY BINKOW & GOLDBERG LLP
1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
Telephone: (310) 201-9150
5 Facsimile: (310) 201-9160

6 Gregory S. Asciolla (*pro hac vice*)
gasciolla@labaton.com
7 Hollis L. Salzman (*pro hac vice*)
hsalzman@labaton.com
8 William V. Reiss (*pro hac vice*)
wreiss@labaton.com
9 LABATON SUCHAROW LLP
140 Broadway
10 New York, NY 10005
Telephone: (212) 907-0700
11 Facsimile: (212) 818-0477

JS-6

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 BOARD OF COMMISSIONERS OF
16 THE PORT OF NEW ORLEANS,

17 Plaintiff,

18 v.

19 VIRGINIA HARBOR SERVICES,
20 INC., ET AL.,

21 Defendants.

No. SACV11-00437-GW (FFMx)

**RULE 54(b) FINAL JUDGMENT
ORDER AS TO: (1) SHI, INC., SHI,
INC. AND FRANK MARCH; AND
(2) ANDREW BARMAKIAN**

Date: September 24, 2012

Time: 8:30 A.M.

**Judge: Honorable George H. Wu
Crm: 10**

1 The Court has considered Plaintiff Board of Commissioners of the Port of
2 New Orleans' ("Plaintiff") Motion for Final Approval of Class Action Settlements
3 ("Marine Pilings Settlements") with Defendants: (1) SII, Inc., SHI, Inc. and Frank
4 March (collectively, "Seaward Defendants"); and (2) Andrew Barmakian
5 ("Barmakian") (together with Seaward Defendants, "Settling Defendants"), and
6 has held a duly-noticed final approval hearing on September 24, 2012. The Court
7 expressly finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure,
8 that there is no just reason for delay, and therefore expressly directs the entry of
9 Final Judgment as to the Settling Defendants:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 11 1. The Court has jurisdiction over the subject matter of this litigation.
- 12 2. Terms used in this Final Judgment Order which are defined in the
13 Settlement Agreements between the Plaintiff and the Settlement Classes on the one
14 hand and the Settling Defendants on the other hand are, unless otherwise defined
15 herein, used in this Final Judgment Order as defined in the Settlement Agreements.
- 16 3. The Court finds that the Marine Pilings Settlements were based on
17 vigorous arm's-length negotiations, which were undertaken in good faith by
18 counsel with significant experience litigating antitrust class actions.
- 19 4. The Court finds that due and adequate notice was provided pursuant
20 to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement
21 Classes certified herein, notifying the Settlement Classes of, *inter alia*, the
22 pendency of the above-captioned action and the proposed Marine Pilings
23 Settlements with the Settling Defendants. The notice provided was the best notice
24 practicable under the circumstances and included individual notice by First Class
25 mail to all members of the Settlement Classes who could be identified through
26 reasonable effort as well as notice published in the *Investor's Business Daily*.
27 Notice fully complied in all respects with the requirements of Rule 23 of the
28

1 Federal Rules of Civil Procedure and the due process requirements of the
2 Constitution of the United States.

3 5. With respect to the Seaward Defendants Settlement Agreement, this
4 Court certifies the following class for settlement purposes only:

5 All persons and entities (but excluding Defendants, their
6 predecessors, parents, subsidiaries, affiliates, and co-
7 conspirators and United States federal government
8 entities) who purchased Marine Pilings in the United
9 States directly from the Seaward Defendants, Named Co-
10 Conspirators, any other Defendant or any of their
11 predecessors, parents, subsidiaries, or affiliates at any
12 time during the period from and including January 1,
13 2000 to and including August 31, 2005.
14

15 With respect to the Barmakian Settlement Agreement, the Court certifies the
16 following class for settlement purposes only:

17 All persons and entities (but excluding Defendants, their
18 predecessors, parents, subsidiaries, affiliates, and co-
19 conspirators and United States federal government
20 entities) who purchased Marine Pilings in the United
21 States directly from any Defendant or Named Co-
22 Conspirator or any of their predecessors, parents,
23 subsidiaries, or affiliates at any time during the period
24 from and including January 1, 2000 to and including
25 August 31, 2005.
26
27
28

1 6. For the purposes of this Order, “Marine Pilings” means reinforced
2 synthetic pilings and timbers, and related ancillary products, that are used in port
3 and pier construction projects.

4 7. The Court finds that certification of the Settlement Classes is
5 appropriate because:

- 6 (a) The Settlement Classes are so numerous that joinder of all
7 members is impracticable, satisfying the requirement of Rule
8 23(a)(1);
- 9 (b) There are questions of law or fact common to the Settlement
10 Classes, satisfying the requirements of Rule 23(a)(2), including:
11 (1) did Defendants conspire to raise, fix, maintain or stabilize
12 the prices, rig bids or allocate markets or customers of Marine
13 Pilings purchased in the United States in violation of Section 1
14 of the Sherman Act; (2) the period of time the conspiracy
15 operated; and (3) whether the conspiracy raised, fixed,
16 maintained or stabilized the prices of Marine Pilings;
- 17 (c) The claims of Settlement Class Representative Board of
18 Commissioners of the Port of New Orleans are typical of the
19 claims of the Settlement Classes, satisfying the requirement of
20 Rule 23(a)(3);
- 21 (d) The Settlement Class Representative will fairly and adequately
22 protect the interests of the Settlement Classes, satisfying the
23 requirements of Rule 23(a)(4); and
- 24 (e) Questions of law and fact common to members of the
25 Settlement Classes, as set forth above, predominate over
26 questions affecting only individual members, and a class action
27 is superior to other methods available for the fair and efficient
28

1 adjudication of the controversy, satisfying the requirements of
2 Rue 23(b)(3).

3 8. The Court's certification of the Settlement Classes as provided herein
4 is without prejudice to, or waiver of, the rights of any Defendant other than the
5 Settling Defendants to contest certification of any other proposed class. The
6 Court's findings in this Final Judgment Order shall have no effect on the Court's
7 ruling on any motion to certify any litigation class and no party may cite or refer to
8 the Court's approval of the Settlement Classes as persuasive or binding authority
9 with respect to any motion to certify such a class.

10 9. The Court finds that no Settlement Class Members have timely and
11 validly requested to be excluded from the Settlement Classes.

12 10. The Court finds that the Settlement Agreements with the Settling
13 Defendants are fair, reasonable and adequate to the Settlement Classes within the
14 meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement
15 Agreements are hereby approved pursuant to Rule 23(e) of the Federal Rules of
16 Civil Procedure.

17 11. The Court finds that the escrow accounts described in the Seaward
18 Defendants Settlement Agreement and the Barmakian Settlement Agreement are
19 qualified settlement funds ("QSF") pursuant to Internal Revenue Code Section
20 468B and the Treasury Regulations promulgated thereunder.

21 12. All claims of Plaintiff and the Settlement Classes that were asserted
22 against the Settling Defendants in the Complaint in the above-captioned Action are
23 dismissed with prejudice, and, except as provided for in the Settlement
24 Agreements, without costs.

25 13. Plaintiff, Settlement Class Members, their predecessors, successors,
26 past and present parents, subsidiaries, affiliates, divisions, and departments, and
27 each of their respective past and present officers, directors, employees, agents,
28

1 attorneys, servants, and representatives, and the predecessors, successors, heirs,
2 executors, administrators, and assigns of each of the foregoing (“Releasing
3 Parties”) are permanently barred and enjoined from prosecuting against the
4 Released Parties, as defined in the respective Settlement Agreements, any and all
5 claims, demands, actions, suits, and causes of action, damages, liabilities of any
6 nature, including without limitation costs, expenses, penalties, and attorneys’ fees,
7 whether class, individual, or otherwise in nature, that Releasing Parties ever had,
8 now have, or hereafter can, shall, or may have directly, representatively,
9 derivatively or in any other capacity against the Released Parties, whether known
10 or unknown, suspected or unsuspected, in law or equity, concerning the pricing,
11 selling, discounting, marketing, manufacturing, or distribution of Marine Pilings in
12 the United States, which arise under and/or relate to any United States federal or
13 state antitrust, unfair competition, unfair practices, price discrimination, unitary
14 pricing, trade practice, or civil conspiracy law, including, without limitation, the
15 Sherman Antitrust Act, 15 U.S.C. § 1 et seq., based in whole or in part on the facts,
16 occurrences, transactions, or other matters alleged in, or that could have been
17 alleged in the Class Action Complaint filed in *Board of Commissioners of the Port*
18 *of New Orleans v. Virginia Harbor Services, Inc. et al.*, No. SACV11-00437 and
19 the Consolidated Amended Class Action Complaint filed in *In re Marine Products*
20 *Antitrust Litigation*, No. CV10-2319-GW (FFMx) (the “Released Claims”),
21 provided, however, that nothing herein shall release: (1) any claims made by
22 purchasers who are solely indirect purchasers of Marine Pilings as to such indirect
23 purchases; (2) claims involving any negligence, breach of contract, bailment,
24 failure to deliver lost goods, damaged or delayed goods or similar claim relating to
25 Marine Pilings; and/or (3) claims under laws other than those of the United States.

26 14. Each member of the Settlement Classes has expressly agreed to waive
27 and release, and shall be deemed to have waived and released, any and all
28

1 provisions, rights and benefits conferred by Section 1542 of the California Civil
2 Code (“Section 1542”), which reads:

3 A general release does not extend to claims which the
4 creditor does not know or suspect to exist in his or her
5 favor at the time of executing the release, which if known
6 by him or her must have materially affected his or her
7 settlement with the debtor.

8 Cal. Civ. Code § 1542 (West).

9 15. Each member of the Settlement Classes has expressly agreed to waive
10 and release, and shall be deemed to have waived and released, any and all
11 provisions, rights and benefits conferred by Section 20-7-11 of the South Dakota
12 Codified Laws (“Section 20-7-11”), which reads:

13 20-7-11. Unknown claims not released by general release

14
15 A general release does not extend to claims which the
16 creditor does not know or suspect to exist in his favor at
17 the time of executing the release, which if known by him
18 must have materially affected his settlement with the
19 debtor.

20 S.D. Codified Laws § 20-7-11.

21 16. Each member of the Settlement Classes may hereafter discover facts
22 other than or different from those which he, she or it knows or believes to be true
23 with respect to the claims which are the subject matter of the provisions of this
24 paragraph, but each of those Settlement Class Members has expressly waived and
25 has fully, finally and forever settled and released all rights and benefits existing
26 under (i) Section 1542, Section 20-7-11 or any equivalent, similar or comparable
27 present or future law or principle of law of any jurisdiction, and (ii) any law or
28

1 principle of law of any jurisdiction that would limit or restrict the effect or scope of
2 the provisions of the release set forth above, without regard to the subsequent
3 discovery or existence of such other or different facts.

4 17. The Settling Defendants shall have no obligation for attorneys' fees,
5 costs or expenses.

6 18. Nothing in this Final Judgment Order or the Settlement Agreements
7 and no aspect of the settlements or negotiations thereof are or shall be deemed or
8 construed to be an admission or concession of any violation of any statute or law or
9 of any liability or wrongdoing by the Settling Defendants or of the truth of any of
10 the claims or allegations in any of the complaints in the Action or any other
11 pleading, and evidence thereof shall not be discoverable or used, directly or
12 indirectly, in any way, whether in the Action or in any other action or proceeding
13 other than to enforce the terms of this Final Judgment Order or the Settlement
14 Agreements.

15 19. Without affecting the finality of the Final Judgment in any way, this
16 Court hereby retains continuing jurisdiction for the purposes of, *inter alia*,
17 implementing and enforcing the Settlement Agreements (including any issue that
18 may arise in connection with the formation and/or administration of the QSFs),
19 entering orders regarding the disbursement of the Settlement Amounts (as defined
20 in the Settlement Agreements) to the Settlement Classes and to Settlement Class
21 Counsel, and adjudicating the Action with respect to Plaintiff's claims asserted
22 against the Defendants.

23
24 DONE AND ORDERED in Chambers in Los Angeles, California this 29th
25 day of November, 2012.

26 

27 HONORABLE GEORGE H. WU
28 UNITED STATES DISTRICT JUDGE